IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5675 of 2003
with
SPECIAL CIVIL APPLICATION Nos. 5678, 5680,
5683, 6290 and 6305 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANJIBHAI SOMABHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5675 of 2003
MR JOY MATHEW for Petitioner No. 1-2
Ms. Harsha Devani, ASSTT. GOVERNMENT PLEADER
for Respondent No. 1-2
MR KM PATEL for Respondent No. 3

2. Special Civil Application no. 5678 of 2003
Mr.Joy Mathew for the petitioners.
Ms. Harsha Devani, Asstt. Government Pleader
for respondent nos.1 and 2.
Mr. K.M.Patel for respondent no.3.

3. Special Civil Application no. 5680 of 2003.
Mr. Joy Mathew for the petitioners.
Ms. Harsha Devani, Asstt. Government Pleader
for respondent nos.1 and 2.
Mr.K.M.Patel for respondent no.3.
4. Special Civil Application no. 5683 of 2003
Mr. Joy Mathew for the petitioners.
Ms. Harsha Devani, Asstt. Government Pleader
for respondent nos.1 and 2.
Mr. K.M.Patel for respondent no. 3.
5. Special Civil Application no. 6290 of 2003
Mr. S.N.Mehta for the petitioners.
Ms. Harsha Devani, Asstt.Government Pleader
for respondent nos. 1 and 2.
Mr. K.M.Patel for respondent no. 3.
6. Special Civil Application no.6305 of 2003.
Mr. S.N.Mehta for the petitioners.
Ms. Harsha Devani, Asstt. Government Pleader for
respondent nos. 1 and 2
Mr. K.M.Patel for respondent no.3.

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 08/07/2003

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI FOR THE COURT)

Rule on each of these petitions. The learned Assistant Government Pleader Ms. Harsha Devani waives service of notice of Rule in all the matters. The learned Advocate Mr. K.M.Patel waives service of notice of Rule for respondent no. 3 in all the matters. As the point involved is a short one and the learned counsel for both the sides request us for taking up the matters for final hearing, we have heard them.

2. In all these petitions, the Special Land Acquisition Officer has made a composite order dated 5th April, 2003 by which he has returned the applications made under section 18 of the Land Acquisition Act seeking a reference to be made against the award. It is surprising that the Land Acquisition Officer, instead of making an order on the applications, has returned them for which there is no provision under the law. It was incumbent on the officer concerned to make orders on the applications which were made by the parties whose lands were acquired and by whom the awards were not accepted.

3. In the impugned order, the Special Land Acquisition Officer has observed that since the applicants had not accepted the amount of compensation under protest, there was no question of making a reference under section 18.

4. Admittedly, the applicants had not accepted the compensation and they did not want to accept the compensation because they wanted to apply for a reference under section 18 of the Act. The applicants were not bound to accept the compensation by recording their protest to enable them to make an application under section 18 of the Act. The Apex Court has in the case of Ashwani Kumar Dhingra vs. State of Punjab reported in (1992) 2 SCC, 592 held that in order to show that the person concerned had not accepted the Award the claimants accept the compensation only under protest because once the compensation awarded in pursuance of the Award is accepted without protest the person concerned may lose his right to a reference for various matters mentioned in section 18 of the Land Acquisition Act. Therefore, where a person who refuses to accept the compensation or accepts it under protest can apply under section 18 for a reference. This however, does not mean that a person who does not accept the compensation (in which even there is no question of accepting it under protest), cannot make an application under section 18 of the Act.

5. Thus, a person who does not accept the compensation under the award is entitled to make an application under section 18 of the Act and he cannot be forced to accept the compensation under protest. Non-acceptance of the award is sufficient for a person to enable him to make an application under section 18 of the Act. Therefore, the order impugned in these petitions is erroneous and illegal and cannot be sustained, and is hereby set aside in each of these petitions.

6. The applications which are returned to the petitioners will be re-submitted to the Special Land Acquisition Officer who will compute the period of limitation from the date on which these applications were originally submitted and make an order thereon in accordance with law. Rule is made absolute accordingly in each of these petitions with no order as to costs.

(R.K.Abichandani,J)

(Kundan Singh,J)

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